

3 S.B. CIVIL WRIT PETITION NO. 4608/1993
[MANI RAM VS. STATE OF RAJ.]

Date:- 27.07.2007

HON'BLE MR. RAJESH BALIA,J.

Mr.R.L.Jangid)
Mr. P.C.Sharma), for the petitioner.
Mr. L.R.Upadhayay, Dy.G.A.

Heard learned counsel for the parties.

This petition has been filed in the year 1993 for seeking multiple prayers about the confirmation of the petitioner on the post of Executive Officer Class V Municipalities by (then designated as Class IV Municipality) w.e.f. the date on which the petitioner was initially appointed on said post and his services were to be confirmed with all consequential benefits on such substantive appointment i.e. with effect from the date, petitioner was initially appointed after selection.

The petitioner claims to hold the educational qualification having graduate and, thereafter, having obtained a diploma in Local Self Government in the year 1973. He had applied for the post of Executive Officer (Class V Municipality) in response to advertisement issued in the year 1974. The petitioner was interviewed in pursuance of

advertisement dated 22.1.1975. Under the said advertisement he was given appointment on 22.1.1975 which was extended from time to time.

The vacancies of the post of Executive Officer are to be filled 50% by way of promotion and 50% by way of direct recruitment. The petitioner had been appointed by direct recruitment.

Vide Notification dated 18.03.1991 the Municipal Rules 1963 were amended and proviso to Rule 7 was added, which reads as under;

“That the name of Executive Officers Class IV and Revenue Officers Gr. II appointed vide rule 27 temporarily or in officiating capacity up to 31.3.79, shall be referred to the Commission to adjudge their suitability according to the qualifications etc. prescribed at the time of their appointments and their appointments shall be terminated immediately in case they are not adjudged suitable.”

The petitioner claimed in pursuance of above rule that his case ought to have been considered by the Commission by adjudging the suitability as on the date, he was initially appointed on the basis of qualification prescribed as was on the date of his initial appointment and, therefore, he has claimed that since he has discharged the function of

Executive Officer satisfactorily from the date of his initial appointment, his case must be considered for substantive appointment and consequential benefits with seniority w.e.f his initial date of appointment that is to say 22.01.1978. The respondents have denied the claim of the petitioner and has urged that unless the petitioner is found suitable by the Commission, he cannot claim for substantive appointment w.e.f. the date of his initial appointment as he has not found suitable by the Commission for the said post. Although, it is not the case of respondent that the RPSC has considered the case of petitioner and found him not suitable for substantive appointment either by RPSC itself or by the Commission. The petitioner now informs after filing of the application his case has been considered and he has been confirmed by the RPSC.

However, in the present petition, petitioner wants to pursue this petition to seek a declaration about his seniority only.

I am of the opinion that the determination of the seniority of the petitioner after getting substantive appointment is not possible in the absence of those persons who are likely to be affected by determination of the seniority, who

are not before us.

In these circumstances, it would be inappropriate and hazardous to take this exercise at this stage by the Court. However since the petitioner claimed and urged for seniority, therefore, it is directed to the petitioner that it will be open for him to make a proper representation before the concerned authority about his claim regarding seniority, which shall be considered and decided by the authority by passing a speaking order. The petitioner's claim that his appointment has been confirmed on being found suitable in terms of aforesaid is also required to be considered by the authority in the light of provision which requires determination of the suitability as on the date of initial appointment which cannot be without any meaning. If the decision goes against the petitioner, he is free to take recourse for remedies as are available to him.

The representation shall be filed within one month from the date of receipt of the certified copy of order. The same may be decided within three months after offering the opportunity of the hearing to the petitioner. There shall no order to costs.

(RAJESH BALIA),J.